APPENDIX A

No. 12,831

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HOOVER MOTOR EXPRESS COMPANY, INC., Appellant

vs.

UNITED STATES OF AMERICA, Appellee

ORDER

Before: SIMONS, Chief Judge; STEPHENS and MCALLISTER, Circuit Judges

The issue in this case is whether fines paid by a truck operator for violation of state laws prescribing weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23(a)(1)A of the Internal Revenue Code of 1939, which provides that, in computing net income, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. The district court held that such fines were not deductible under the above-mentioned section of the statute. The taxpayer challenged the decision of the district court on the ground that none of the violations for which the penalties were imposed were wilful; and that it had taken all practicable precautions to avoid such violation. Deductions allowed by the statute are matters of legislative grace; and the burden is on the taxpayer to show his claim is within its provisions. *United States & Olympic Radio and Television*, 349 U.S. 232. The Bureau of Internal Revenue and the courts have, from time to time, narrowed the generally accepted meaning of the language used in Sec. 23(a) in order that tax deduction consequences might not frustrate sharply defined national or state policies prescribing particular types of conduct. Where a taxpayer has violated a federal or a state statute and incurred a fine

or penalty, he has not been permitted a tax deduction for its payment. *Commissioner* v. *Heininger*, 320 U.S. 467, 473.

The trial court in the instant case held that the underlying policy of the laws under which the fines were paid was not only to protect the highways of the state but also to protect the persons using them. The trial court further declared that assuming the taxpayer took every precaution that could fairly be demanded consistent with a practical operation of its business, and that it did not act with wilful intent, nevertheless, the allowance of the claimed deductions would frustrate the clearly defined policies of the applicable state weight limitation laws. The claimed deductions were, therefore, disallowed. With these views, we concur.

The judgment of the district court is accordingly affirmed upon the opinion of Judge Miller, 135 Fed. Supp. 818.

Approved for entry:

_____,
United States Circuit Judge.

UNITED STATES DISTRICT COURT

Memorandum Opinion

(Entered October 11, 1955)

The principal issue for decision is whether fines paid by a truck operator for violations of state laws prescribing maximum weight limitations are deductible from gross income as ordinary and necessary business expenses under Section 23 (a) (1) (A) of the Internal Revenue Code which provides as follows:

> "In computing net income there shall be allowed as deductions: . . . all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business . . ."

The Commissioner of Internal Revenue, on September 10, 1942, issued a special ruling that such fines were deductible. That ruling remained in effect until it was rescinded by a new ruling of the Commissioner issued November 30, 1950.

The reasons for revocation of the earlier ruling are set forth in the regulation of November 30, 1950, as follows:

> "Reconsideration has been given to the conclusion heretofore reached by the Bureau that fines paid by truck operators for violations of State laws prescribing maximum weights, loads, and sizes of vehicles are deductible from gross income as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code.
>
> "That conclusion was based upon the understanding that the fines in question were paid in lieu of fees which would have been payable for permits to operate overloaded or overlength vehicles, and that such permits were generally granted by State highway authorities. The fines were, therefore, regarded as more in the nature of tolls than penalties.
>
> "Upon reconsideration of the question involved it appears that the premise on which the Bureau's conclusion was based was erroneous. It is therefore held that fines paid by truck operators for violations of State laws prescribing maximum weights, loads and sizes of vehicles are penalties which are not deductible as ordinary and necessary business expenses under section 23(a)(1)(A) of the Internal Revenue Code. (See Burroughs Building Material Co. v. Commissioner, 47 Fed. (2d) 178, Ct. D. 297, C. B. X-1, 397 (1931); and G. C. M. 11358, C. B. XII-1, 29 (1933).)"

Plaintiff is a common carrier of freight by motor vehicle operating in the states of Georgia, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Illinois, and Missouri, all of which have truck weight limitation laws which are similar in general character although they vary with respect to details and with respect to the maximum weight limitations imposed. For the years 1951 through 1953, plaintiff paid various fines imposed upon it because of its violations of such laws, and in its income tax returns for those years, deducted the amounts of the fines from gross income as ordinary and necessary business expenses under the provisions of Section 23(a)(1)(A) of the Internal Revenue

Code. Its returns for those years, having been audited and the deductions disallowed by the Commissioner consistently with his ruling of November 30, 1950, the plaintiff paid the resulting additional income and excess profits taxes for the years involved and instituted the present action for their recovery.

The theory of the plaintiff is that the weight laws of the states in which it operates are so restrictive in character and have such variations in permissible weight limitations that it is practically impossible to operate the plaintiff's motor carrier business without incurring the penalties imposed, notwithstanding good faith efforts upon its part to comply with the weight regulations. It is insisted that the plaintiff has carried the burden of proof to show that its violation of the weight laws were neither wilful nor negligent and that the fines were incurred despite all reasonable efforts and precautions on its part to comply. On the basis of this reasoning, it is insisted that the question is controlled by such cases as Jerry Rossman Corporation v. Commissioner, (2 Cir.) 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 182 F. 2d 526; and Commissioner v. Pacific Mills, 1 Cir., 207 F. 2d 177, in which it was ruled that overcharges under the Emergency Price Control Act of 1942 which were neither wilful nor the result of failure to take practicable precautions were deductible as ordinary and necessary business expenses within the meaning of the Internal Revenue Code.

The defendant denies that the plaintiff has carried the burden of showing that its violations were neither wilful nor the result of failure to exercise due care or to take proper precautions, and insists, in any event, that the exactions under the weight limitation laws which the plaintiff was required to pay, constituted "penalties", or were punitive in nature, and that to allow them as deductions would frustrate the clearly defined policy of state laws within the doctrine of Great Northern Ry. Co. v. Commissioner, 8 Cir., 40 F. 2d 372, Chicago R. I. & P. Ry. Co. v. Commissioner, 7 Cir., 47 F. 2d 990, Burroughs Bldg. Material Co. v. Commissioner, 2 Cir., 47 F. 2d 178, Commissioner v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, and other decisions of like import.

It appears that the fines paid by the plaintiff for the taxable years resulted in large measure, probably in the vast majority of instances, because one or more axles of the vehicle involved carried weight in excess of the per axle limitation imposed by the various states, although in these instances the vehicle with its load of freight was within the overall weight limitations. The proof shows that such violations usually occurred because of a shifting of the freight within the vehicle during transit.

In other instances, the proof suggests that violation occurred when the plaintiff picked up freight in small communities or from business concerns located on the open highways and loaded its vehicles in reliance upon the weight of the load as shown on the bill of lading which was prepared by the shipper, there being no opportunity to weight the shipments until they arrived at a major terminal point. In still other cases, the violations resulted when it became necessary for the plaintiff to substitute a tractor of heavier weight after a breakdown enroute because a tractor of similar weight was not at that time available. The plaintiff also introduced evidence to the effect that other freight haulers regularly pay fines under the weight limitation laws and it is argued from the entire record that the situation is such that the plaintiff's business can not be operated on a practical basis without necessarily incurring the fines and penalties imposed by the law.

On the other hand, it is argued for the defendant that many other transportation companies are able to operate within the weight limitations, and it is insisted that by reasonable efforts the plaintiff would find no difficulty in avoiding violations, for example, by improving its methods of loading and packing the freight within the vehicle to avoid shifting in transit, by closer supervision of its operations, and by more careful inspection and adjustment of its weighing facilities.

In the view which the Court takes of the case, it is not necessary to determine whether the plaintiff did all which should reasonably be required of it as a prudent operator to comply with the weight limitations involved. Assuming that it took every precaution that could fairly be demanded

consistent with a practical operation of its business, and assuming further that it did not act with wilful intent, the Court is of the opinion that to allow the claimed deductions from gross income for the taxable years would nevertheless frustrate the clearly defined policies of the applicable state weight limitation laws.

There can be no doubt that the underlying policy of the laws under which the fines were paid is not only to protect the highways of the state but also to protect the persons using them. Violations of the statutes are punishable by the imposition of a fine which is penal in character. No distinction is made in the statutes between an innocent or non-negligent violation, on the one hand, and one which is either wilful or due to a negligent failure to take adequate precautions, on the other hand. It was evidently considered that the purposes of the statutes could be accomplished more effectively by treating all violators alike. This thought is borne out by the provisions commonly found in statutes of this character that the Commissioner of Highways, or other proper authority, shall have discretionary power to grant special permits for freight movements in excess of the prescribed weight limitations, the inference being that, in the absence of such special permit, neither hardship nor good faith shall constitute a defense to a violation.

There are a number of cases holding that statutory penalties are not deductible from gross income as ordinary business expenses. The reason for this doctrine was succintly stated in Commissioner of Internal Revenue v. Longhorn Portland Cement Co., 5 Cir., 148 F. 2d 276, 277, in which deductibility was denied of sums paid by the taxpayer in satisfaction of statutory penalties incurred for violations of state antitrust laws:

> " * * * that the penalty is a punishment inflicted by the state upon those who commit acts violative of the fixed public policy of the sovereign, wherefore to permit the violator to gain a tax advantage through deducting the amount of the penalty as a business expense, and thus to mitigate the degree of his punishment, would frustrate the purpose and effectiveness of that public policy."

Upon like reasoning deductions have been denied for fines and costs paid for violations of state laws relating to price fixing, Burroughs Bldg. Material Co. v. Commissioner, supra; and for sums paid by railroads for violations of the federal safety appliance laws. Chicago R. I. & P. Ry. Co. v. Commissioner, supra; and Great Northern Ry Co. v. Commissioner, supra.

But the soundness of the rule which would deny deductibility to all statutory penalties, or which would make the punitive character of the exaction an inflexible criterion, has been seriously questioned in later cases, particularly the case of Jerry Rossman Corp. v. Commissioner, supra. In that case Judge Hand pointed out that "there are 'penalties' and 'penalties' ", and ruled that the real test in the case of a penalty, as in the case of any other exaction, is whether its allowance as a deduction would frustrate the sharply defined policy of the statute, the question being decided in every case ad hoc. Applying this rule, the court found, as other courts have done in similar cases, that the allowance as a deduction of an innocent and non-negligent overcharge under the Emergency Price Control Act of 1942 did not frustrate the policy of that particular Act.

It is significant to note that Judge Hand held in the Rossman case that the overcharge under the Emergency Price Control Act was not a penalty, although he went further and ruled hypothetically that if it should be regarded as penal in nature, its allowance as a deduction did not frustrate the policy of the Act. It is clear from the opinion in the case that this result was reached because the court found that the Administrator, in applying the Act, had adopted the policy of making a distinction between innocent violators and those who had violated the Act because of wilfulness or a failure to take practicable precautions. Accordingly, the court found that where the Administrator had accepted the overcharge as sufficient without requiring the payment of treble damages, such acceptance was evidence of the fact that he regarded the overcharge as having been made innocently, with the result that no policy of the Act was frustrated.

The policy which had been pursued by the Administrator

was incorporated into the Act itself by the 1944 amendment of Section 205(e), and the other OPA cases, subsequent to the Rossman case, were decided on the basis of the amendment. Thus, in the case of Commissioner v. Pacific Mills, supra, the question before the court was whether a payment to the Office of Price Administration in settlement of claims for overcharges was deductible as an ordinary and necessary business expense under Section 23(a)(1)(A) of the Internal Revenue Code. In holding that the overcharge was deductible, the court found that its allowance as a deduction would not frustrate the Act. The reasoning of the court is clearly indicated by the following excerpt from its opinion: [207 F. 2d 177, 182]:

> "It is clearly evident from the wording of the amended statute itself, as well as from the legislative history of the amendatory act, that the fundamental policy of the act as amended was to draw a sharp line of distinction between innocent violators on the one hand, and those who had either violated the act wilfully or else had failed to take practicable precautions to comply, on the other. To this end violators were subjected by Sec. 205(e) of the amended act to payment of no more than their overcharges for the preceding year, or $25, whichever was greater, when they were able to prove that their violation was neither wilful nor the result of their failure to take practicable precautions against the occurrence of their violation. But violators who could not prove both their lack of wilfulness and that they had taken practicable precautions to comply were subjected in the court's discretion to the payment of up to three times the amount of their overcharges for the preceding year or else to not less than $25 nor more than $50, whichever sum should be the greater. Payment in either event was to be to the purchaser provided he sued within the time limited therefor in the act, unless he purchased the commodity involved for use or consumption in his trade or business, for in that event, presumably, the first buyer had passed the overcharge on to those who had in turn purchased from him and it would be in-

equitable for him to recover and impractical to find those who had actually suffered from the overcharge. But, to prevent a violator in either category from wholly escaping the consequences of his violation, the section provided for payment to the Administrator whenever a purchaser for any reason was not entitled to sue. From these provisions it seems clear that the policy of the statute was not to punish violators who could prove that their violation was neither wilful nor the result of failure to take practicable precautions, but only to make them give up the proceeds of their violation, either as restitution to the buyer or, to prevent the violator's unjust enrichment, to the Administrator. But, as to violators who were unable to prove that their violation was neither wilful nor the result of failure to take practicable precautions it was the policy of the statute to require payment not only of the amount of the recoverable overcharges, but up to three times that amount in the discretion of the court. Thus, assuming that to allow a violator who was unable to prove that his violation was neither wilful nor the result of his failure to take practicable precautions, (one whom we may call for convenience a culpable violator) to deduct a payment such as the one under consideration would indeed frustrate the clearly defined policy of the act, National Brass Works v. Commissioner, 9 Cir., 1953, 205 F. 2d 104, the question arises as to whether Pacific Mills was such a violator or not, for if it was not, no statutory policy would be violated by permitting it to deduct its payment to the Administrator. Jerry Rossman Corp. v. Commissioner, 2 Cir., 1949, 175 F. 2d 711; National Brass Works v. Commissioner, 9 Cir., 1950, 182 F. 2d 526; Hershey Creamery Co. v. United States, 1952, 101 F. Supp. 877, 122 Ct. Cl. 423."

Accordingly, in the OPA cases there was statutory authority for a distinction between innocent and wilful violators, and since the Act itself made the distinction, it was

possible to find that the allowance of an innocent and non-negligent overcharge as a deduction would not in any way impair or frustrate the policy of the Act. But the policy of the state weight limitation laws under consideration is to place all violators on the same basis without recognition of degrees or character of guilt. This being true, it would clearly frustrate the policy of the statutes if the distinction should be made by a court in applying the provisions of Section 23 (a) (1) (A) of the Internal Revenue Code. To the extent that the deductions should be allowed because of innocence or due care the taxpayer would be relieved of the consequences of his violation, although the state law itself made no such distinction.

The plaintiff also questions the disallowance by the Commissioner of sums paid by the plaintiff for the taxable years on account of fines for traffic violations, but the Court is of the opinion that plaintiff has failed to carry the burden of proof to show that the allowance of these sums would not frustrate the policy of state or municipal laws. The proof does not clearly show the character of the particular laws involved or the circumstances under which the fines were levied and paid.

Another item involves fines paid under a Kentucky statute which required that motor vehicles be equipped with certain mechanical signal devices to give warning when the vehicle was to make a turn. It is shown that the statute was later construed as not requiring the mechanical device if the truck driver gave a hand signal of his intention to make a turn; and it is a fair conclusion from the record that the fines were levied not because of failure to give a signal at any particular intersection or at any particular time, but rather on account of the failure of the vehicle to have the necessary equipment. This being true, the Court feels that the allowance of these fines as deductions would not frustrate any clearly defined policy of the state statute and consequently that the plaintiff was entitled to deduct them from gross income for the particular years involved.

A judgment will be submitted in conformity with this memorandum and either party may, if desired, submit sug-

gestions for additional findings of fact or conclusions of laws.

WM. E. MILLER,
Judge.

Attest: A True Copy
L. B. ORMES, *Clerk*,
U. S. District Court, (Seal)
Middle District of Tennessee,
By S. W. DORRIS, *D. C.*

JUDGMENT

(Entered February 2, 1956)

This cause, having been heard by the Court on September 23, 1955, and in accordance with the memorandum of the Court, it is,

ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of plaintiff, Hoover Motor Express Co., Inc., and against the defendant, United States of America, in respect to the taxable year 1951, in the amount of $710.39, and with respect to the taxable year 1952, in the amount of $55.56, together with interest thereon in respect to both years, as provided by law, from November 1, 1954, but recovery of the remaining portion of plaintiff's suit hereby denied.

The parties herein shall bear their respective costs.

Dated this 2nd day of February, 1956.

(S.) WM. E. MILLER, *Judge*,
United States District Court.

Attest: A True Copy,
U. S. District Court,
Middle District of Tennessee,
By GUY W. COOPER, *D. C.*

Approved for Entry:

L. B. ORMES, *Clerk*, (Seal)
(S.) JUDSON HARWOOD,
Attorney for Plaintiff.
(S.) FRED ELLEDGE, JR.,
Attorney for Defendant.

APPENDIX B

Sec. 23. Deductions from Gross Income.

In computing net income there shall be allowed as deductions:

(a) [as amended by Sec. 121(a) of the Revenue Act of 1942, c. 619, 56 Stat. 798]. *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,

* * * * * *

(26 U.S.C. 1952 ed., Sec. 23.)

8 Burns, Indiana Statutes Annotated, Part 2 (1952):

47-536a. *Fines proportional to amount of overweight —Impounding overweight vehicles.*—Any person who operates or causes to be operated any vehicle or combination of vehicles having a weight in excess of one [1] or more of the limitations set out in section 8 [§ 47-536] shall be guilty of a misdemeanor and on conviction shall be fined as follows:

* * * * * *

When a person is apprehended operating or causing to be operated a vehicle or combination of vehicles on any public highway in the state of Indiana with a weight in excess of the limitations set out in section 8, said vehicle or combination of vehicles shall be impounded and kept within the custody of the officer apprehending such vehicle or combination of vehicles and to be moved only as directed by said officer; and such officer shall cause said truck to be kept impounded until its weight is so reduced as to comply with the limitations expressed in section 8 and until all fines and costs levied on the basis of such excess weight are paid

or stayed, and any person so apprehended who shall move such vehicle or combination of vehicles or cause the same to be moved, after the same is impounded by said officer, other than as expressly directed by said officer, shall be subject to be charged with a felony and upon conviction shall be subject to a fine of not less than $500 nor more than $1,000 to which may be added imprisonment in the Indiana state reformatory or state prison for a period of not less than one [1] nor more than five [5] years.

[*Amendments.* The 1953 amendments substituted the words "in the sum of five dollars, and shall in addition be assessed the following civil penalties" for the words "as follows."]

Code of Alabama (1940):

Sec. 83. *Penalties; in general.*—The operation of any motor truck, semi-trailer truck or trailer, in violation of any section of this chapter, or of the terms of any permit issued hereunder, shall constitute a misdemeanor, and the owner thereof, if such violation was with his knowledge or consent, and the operator thereof, shall on conviction be fined not less than one hundred dollars, and may also be imprisoned or sentenced to hard labor for the county for not less than thirty days nor more than sixty days.

Georgia Code Annotated:

68-9921. *Violation of 68-405 et seq., relating to size of vehicle, weight of load, and lamps.*—Any person, firm, corporation, association, trustee, receiver, or other fiduciary, or owner, employee or other agent, who, by himself, itself, or themselves, or through or in connection with another, violates or participates in violation of any of the provisions of section 68-405 *et seq.*, relating to size of vehicle, weight of load, and lamps, shall be guilty of a misdemeanor and punished as such.

68-9925. *Violation of terms of excessive weight permit.*—Any operator of a motor vehicle operating under

the special permit to operate a vehicle of excessive weight, as prescribed by section 68.407.1, or the owner of such vehicle, shall be guilty of a misdemeanor if such operator or owner shall violate any of the terms or conditions of such special permit.

15 Jones, Illinois Statutes Annotated:

85.065. *Penalties—Revocation of license—Disposition of fines—Appointment of investigators.* Any person wilfully violating the provisions of this Act shall, except as otherwise provided herein, upon conviction, be fined in a sum not to exceed the amount hereinafter set forth.

* * * * *

Provided, that any offender who shall have been found guilty of a violation of any section of this Act and who shall thereafter be convicted of a second violation of such section, may be fined in a sum not exceeding double the penalty herein provided for a first offense, and in addition thereto may have his certificate or license issued by the Secretary of State revoked for a period not exceeding three months, and for a third or subsequent violation of the same section of this Act the certificate or license may, in addition to the fine provided for the second offense, be revoked for a period not exceeding six months. * * *

Kentucky Revised Statutes (1953):

Chapter 189

TRAFFIC REGULATIONS AND EQUIPMENT OF VEHICLES

* * * * *

189.221 *Basic height, width, length and weight limits for trucks and semi-trailer trucks.* No person shall operate on any highway, except such highways as may be designated by the Commissioner of Highways under

the provisions of KRS 189.222, any of the following vehicles:

[Here follows a description of the maximum allowable height, width, length, and weight of motor and semi-trailer trucks.]

189.222 *Increased height, length and weight limits on designated highways.* The Commissioner of Highways, in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length and gross weight prescribed in KRS 189.221, if in the opinion of said commissioner, the increased height, length and weight designated by him are justified by the strength, safety and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases; and said commissioner is authorized to estaiblish reasonable classifications of such roads and to fix a different maximum for each classification. However, in no event shall any motor truck or semi-trailer truck, including any part of the body or load, exceed the following dimensions and weights:

* * * * *

189.270 * * * *Special permit to exceed weight, height, width or length limits.* (1) The department may prescribe, by orders of general application, rules and regulations for the issuance by it of permits for the operation of motor trucks, tractors, semi-trailers and trailers, whose gross weight including load, height, width or length exceeds the limits prescribed by this chapter or which in other respects fail to comply with the requirements of this chapter. Permits may be issued by the department for stated periods, special purposes and unusual conditions, and upon such terms in the interest of public safety and the preservation of the highways as the department may, in its discretion, require. The department shall require, as a condition to the issuance

of the permit, that the applicant pay a reasonable fee, to be fixed by it, and may require that the applicant give bond, with approved surety, to indemnify the state or counties against damage to highways or bridges resulting from use by the applicant. The operation of motor trucks, tractors, semi-trailers or trailers, in accordance with the terms of any such permit shall not constitute a violation of this chapter if the operator has the permit, or a copy of it, authenticated as the department may require, in his possession.

(2) No person shall operate any motor truck, tractor, semi-trailer or trailer, in violation of the terms of the permit.

* * *

189.670 * * * *Public policy as to trucks declared.* It is hereby declared to be the public policy of this state that heavy motor trucks, alone or in combination with other vehicles, increase the cost of highway construction and maintenance, interfere with and limit the use of highways for normal traffic thereon, and endanger the safety and lives of the traveling public, and that the regulations embodied in this chapter with respect to motor trucks, semi-trailer trucks and semi-trailers are necessary to achieve economy in highway costs, and to permit the highways to be used freely and safely by the traveling public.

189.990 * * * *Penalties.* * * *

(2) (a) Any person who violates the weight provisions of KRS 189.221 or 189.222 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount equal to two cents per pound for each pound of excess load when the excess is 2,000 pounds or less, three cents per pound when the excess exceeds 2,000 pounds and is 3,000 pounds or less, five cents per pound when the excess exceeds 3,000 pounds and is 4,000 pounds or less, seven cents per pound when the excess exceeds 4,000 pounds and is 5,000

pounds or less, and nine cents per pound when the excess exceeds 5,000 pounds but in no case to exceed $500.

(b) Any person who violates any provision of * * * KRS * * * 189.270 * * * for which another penalty is not specifically provided, shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding $500.

* * * * * *

6 Mississippi Code Annotated (1942):

8275. *Penalties for misdemeanor.*—(a) It is a misdemeanor for any person to violate any of the provisions of this Act unless such violation is by this Act or other law of this State declared to be a felony.

(b) Every person convicted of a misdemeanor for a violation of any of the provisions of this Act for which another penalty is not provided shall for first conviction thereof be punished by a fine of not more than $100.00 or by imprisonment for not more than ten days; for a second such conviction within one year thereafter such person shall be punished by a fine of not more than $200.00 or by imprisonment for not more than twenty days or by both such fine and imprisonment; upon a third or subsequent conviction within one year after the first conviction such person shall be punished by a fine of not more than $500.00 or by imprisonment for not more than six months or by both such fine and imprisonment.

2 Williams, Tennessee Code Annotated (1934):

1166.36. *Penalty for violation.*—Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state with a greater gross weight than that authorized by the registration thereof shall be compelled to register such freight motor vehicle in the class within which its then weight shall fall, which registration shall not be taken for a less period of time

than one year, and shall further be required to pay a penalty of twenty (20) per centum of the amount of the registration fee in the class within which its then weight shall fall; it shall be the duty of the county court clerk to collect said penalty of twenty (20) per centum at the same time said new registration is made, and to remit said penalty to the department of finance and taxation as other motor vehicle registration funds are remitted; no officer shall be authorized to relieve, release, or waive said twenty (20) per centum penalty or any part thereof; in computing the amount of registration fee due in each case, the person so registering said vehicle shall be credited with the amount of registration fee paid for the class in which he has registered such truck; provided, however, that the penalty of twenty (20) per centum hereinabove provided shall be computed upon the gross amount of the larger fee, and not upon the difference between the registration fees in the higher class and lower class.

Any person, firm or corporation owning or operating any freight motor vehicle over the roads of this state in excess of the maximum limits herein provided or with a greater gross weight than that authorized by the registration thereof shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than $25.00 or more than $300.00.

It shall be the duty of the driver of any freight motor vehicle licensed under this act to carry in said vehicle at all times a duplicate of the registration certificate for said vehicle, which duplicate certificate shall be available for inspection by employees and agents of the department of finance and taxation, members of the Tennessee highway patrol, or other peace officers. Any person failing to have in his possession such certificate or refusing to furnish same for inspection, as required by this paragraph, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $2.50 nor more than $50.00.

No vehicle found to be loaded in excess of the maximum weight provided under the class in which the same has been registered shall be taken from the charge and custody of the arresting officer until the fine imposed by this act upon conviction shall have been paid or secured, nor until the registration fees provided by this act shall have been paid and the proper identification tags affixed to such vehicle; provided further that no such vehicle found to have gross weight in excess of the maximum prescribed by law shall be permitted to continue on its way until the weight thereof is reduced to the lawful limit.

NEW KENTUCKY STATUTE

Commonwealth of Kentucky

GENERAL ASSEMBLY

Second Extraordinary Session, 1956

Senate Bill No. 1

Monday, March 19, 1956

The following bill, which originated in the Senate, was ordered to be printed.

AN ACT relating to motor trucks and motor vehicles establishing and regulating the maximum weight and dimensions thereof and authorizing the Commissioner of Highways to designate classification of highways for the purpose of regulating said maximum weights.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. Section 189.010 of the Kentucky Revised Statutes is amended to read as follows:

As used in this chapter, unless the context requires otherwise,

(1) "Department" means the Department of Highways.

(2) "Highway" means any public road, street, avenue, alley or boulevard, bridge, viaduct or trestle and the approaches to them.

(3) "Motor truck" means any motor-propelled vehicle designed for carrying freight or merchandise. It shall not include self-propelled vehicles designed primarily for passenger transportation, but equipped with frames, racks or bodies having a load capacity of not exceeding one thousand pounds.

(4) "Operator" means the person in actual physical control of a vehicle.

(5) "Semitrailer" means a vehicle designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand pounds.

(6) "Truck tractor" means any motor-propelled vehicle designed to draw and to support the front end of a semitrailer. The semitrailer and the truck tractor shall be considered to be one unit.

(7) "Sharp curve" means a curve of not less than thirty degrees.

(8) "State Highway Patrol" means any agency for the enforcement of the highway laws established pursuant to KRS 12.030, 176.020 and 281.380.

(9) "Steep grade" means a grade of exceeding seven percent.

(10) "Trailer" means any vehicle designed to be drawn by a motor truck or truck-tractor, but supported wholly upon its own wheels, intended for the carriage of freight or merchandise, and having a load capacity of over one thousand pounds.

(11) "Unobstructed highway" means a straight, level, first-class road upon which no other vehicle is passing or attempting to pass, and upon which no other vehicle or pedestrian is approaching in the opposite direction, closer than three hundred yards.

(12) "Vehicle" includes all agencies for the transportation of persons or property over or upon the public highways of this Commonwealth and all vehicles

passing over or upon said highways, excepting road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electric power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five miles beyond the city limit of any municipality. "Motor vehicle" includes all vehicles as defined above which are propelled otherwise than by muscular power.

Section 2. Section 189.222 of the Kentucky Revised Statutes is amended to read as follows:

The Commissioner of Highways, in respect to highways which are a part of the state-maintained system, by official order, may increase on designated highways or portions thereof, the maximum height, length and gross weight prescribed in KRS 189.221, if in the opinion of said commissioner, the increased height, length and weight designated by him are justified by the strength, safety and durability of the designated highways, and said highways do not appear susceptible to unreasonable and unusual damage by reason of such increases; and said commissioner is authorized to establish reasonable classifications of such roads and to fix a different maximum for each classification. However, in no event shall any motor truck or tractor semitrailer combination, including any part of the body or load, exceed the following dimensions and weights:

(1) Height, 12½ feet.

(2) Length, truck tractors and semitrailers, 48 feet; motor trucks, 35 feet.

(3) Weight, 18,000 pounds per single axle, with axles less than 42 inches apart to be considered as a single axle; 32,000 pounds on two axles in tandem arrange-

ment which are spaced 42 inches or more apart and less than 120 inches apart; 600 pounds per inch of aggregate width of all tires; gross weight, 59,640 pounds.

(4) A tolerance of not more than five percent per axle load shall be permitted before a carrier is deemed to have violated subsection (3) of this section. In no event shall the gross weight exceed 59,640 pounds.

Section 3. Whereas, it is to the best interest of the people of the Commonwealth of Kentucky that the provisions of this Act take effect at the earliest possible date, an emergency is declared to exist and this Act shall become effective immediately upon its passage and approval by the Governor.

Applicable Tennessee Statutes

59-1101 *Operation of vehicles injurious to highways must conform to regulations.*—No vehicle, truck, engine, or tractor of any kind, whether such vehicle be propelled by steam, gasoline, or otherwise, shall be permitted to operate upon any street, road, highway, or other public thoroughfare which, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of such street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of such vehicle of any kind, shall have complied with such rules and regulations as may be prescribed by the department of highways and public works and department of safety, relating to the use of such highways by such vehicles.

59-1102. *Regulations governing wheel surfaces.*—The state department of highways and public works is empowered to prescribe by regulations the manner in which the wheels of vehicles shall be equipped in order to protect the surface and foundation of streets, roads and highways including the bridges thereon.

59-1103. *Maximum weight may be lowered when—Notices to be posted.*—From January 15th to April 15th of each year, and at any other time when by reason of repairs, weather conditions, or recent construction of the road, the

maximum weight herein permitted would damage the road, the state department of highways and public works may specify any lower maximum weight, which in the discretion of such department, is necessary in order to protect such streets, roads, highways, or other public thoroughfares from unnecessary injury or damage; provided, that notice of such reduction in weight of load shall be given by said department by posters posted at the terminal of the road and all detours for one (1) week before such reduction of load becomes effective.

59-1106. *Liability for damages to highways.—Suit by District Attorney.*—The owner to any vehicle driven upon the public thoroughfare, in violation of any of the provisions of §§59-1101—59-1107, or regulations issued thereunder shall also be liable in an action for damages caused to such public thoroughfares, such action to be prosecuted in the name of the state by the district attorney of the district in which the violation occurs.

59-1107. *Maximum length of vehicles.*—No motor vehicle as defined in 59-1103 whose length, including any part of its body or load, exceeds thirty-five feet, and no motor vehicle with trailer or semitrailer attached, the total length of which combination, including any part of the body or load, exceeds forty-five (45) feet, shall be operated on any highway.

59-1109. *Maximum weight per single axle or group of axles allowed.*—Except as otherwise provided by law, no freight motor vehicle shall be operated over, on, or upon the public highways of this state where the total weight on a single axle, or any group of axles, exceeds the weight limitations set forth below in subsections A, B, C, D, E and F:

A. No axle shall carry a load in excess of eighteen thousand (18,000) pounds.

An axle load as set out herein is defined as the total load transmitted to the road by all wheels whose centers may be included between two (2) parallel transverse vertical planes, forty (40) inches apart, extending across the full width of the vehicle.

B. No group of axles shall carry a load in pounds in

excess of the value set forth in the following table corresponding to the distance in feet between the extreme axles of the group, measured longitudinally to the nearest foot:

Distance in Feet Between First and Last Axles of Group	Maximum Load in Pounds on Group of Axles
4	32,000
5	32,000
6	32,000
7	32,000
8	32,610
9	33,580
10	34,550
11	35,510
12	36,470
13	37,420
14	38,360
15	39,300
16	40,230
17	41,160
18	42,080
19	42,990
20	43,900
21	44,800
22	45,700
23	46,590
24	47,470
25	48,350
26	49,220
27	50,090
28	50,950
29	51,800
30	52,650
31	53,490
32	54,330
33	55,160
34	55,980
35	55,980
36	55,980
37	55,980

The weights set forth in column 2 of the above table shall constitute the maximum permissive gross weight for any such vehicle, or combination of such vehicles.

C. The total gross weight concentrated on the highway surface from any tandem axle group shall not exceed thirty-two thousand (32,000) pounds for each such tandem axle group. A "tandem axle group" is defined to be two (2) or more axles spaced forty (40) inches or more apart from center to center having at least one (1) common point of weight suspension.

D. No freight motor vehicle, truck tractor, trailer or semi-trailer, nor combinations of such vehicles, shall be operated over, on or upon the public highways of this state where the total gross weight of such vehicle or combination thereof including the load thereon, exceeds fifty-five thousand nine hundred eighty (55,980) pounds, except such vehicles or combinations thereof, operate under special permits now authorized by law.

E. A freight motor vehicle, as used in this section, includes both the tractor or truck and the trailer, semi-trailers, if any, and the weight of any such combination shall not exceed the maximum fixed herein; provided, however, that no freight motor vehicle with motive power shall haul more than one (1) vehicle.

F. No freight motor vehicle shall haul a trailer on any highway of this state when such trailer (including its load) weighs more than thirty-five hundred (3,500) pounds, and the hauling of a trailer which, including its load, weighs more than thirty-five hundred (3,500) pounds is hereby prohibited and declared unlawful. For the purposes hereof a trailer is defined as a vehicle without motive power designed or used for carrying freight or property wholly on its own structure, provided, however, that it shall not be unlawful for any motor vehicle subject to 59-1107—59-1112 to have a semitrailer, which, for the purposes hereof, is defined as a vehicle for the carrying of property or freight and so designed that some part of the weight of such semitrailer or its load rests upon or is carried by the motor vehicle to which it is attached. Provided, that the hauling of a trailer (to the extent herein permitted) or a semitrailer, shall be subject to the further provisions hereof. Provided, further, that said 59-1107—59-1112 are not in-

tended to prohibit the movements of spools carrying wire or cable, when used for construction or repair purposes.

59-1111. *Special permits for moving vehicles of excess weight or size.—Reduction of weight and size regulations.—Signs indicating.*—The commissioner of highways and public works shall have the authority to grant special permits for the movements of freight motor vehicles carrying gross weights in excess of the excess of the gross weights set forth in 59-1109 or dimensions in excess of the dimensions set forth in 59-1107, 59-1108. The commissioner of highways and public works shall have the authority to reduce the maximum gross weight of freight where through weakness of structure in either the surface of or the bridges over such lateral highways or secondary roads, the maximum loads provided by law, in the opinion of the commissioner, injure or damage such roads or bridges. The appropriate county officials shall have the same authority as to county roads.

59-1112. *Penalty for violation of* 59-1107—59-1111—*Injunction proceedings—Disposition of fines, penalties and forfeitures.*—Each violation of 59-1107—59-1109 and each violation of restrictions on the maximum gross weight of freight motor vehicles duly adopted and promulgated by the commissioner of highways and public works, under 59-1111, and each violation of rules and regulations duly adopted and promulgated by the commissioner of safety under said section, shall be a misdemeanor and, upon conviction thereof, a fine of not less than twenty-five ($25.00) dollars nor more than five hundred dollars ($500.00) shall be assessed. Any taxpayer of the state shall have the right by injunction proceeding to enjoin any actual or threatened use of any highway prohibited by said sections. All fines, penalties and forfeitures of bonds imposed or collected under this section shall be paid over within ten (10) days after receipt thereof to the department of safety with a statement accompanying the same, setting forth the action or proceedings in which such moneys were collected, the name and residence of the defendant, the nature of the offense, and fine, penalty or forfeiture imposed.